

**Before the
Federal Communications Commission
Washington, DC 20554**

In the matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
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To: The Federal-State Joint Board

**COMMENTS OF
RURAL CELLULAR ASSOCIATION
AND
THE ALLIANCE OF RURAL CMRS CARRIERS**

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SUMMARY

Rural Cellular Association and the Alliance of Rural CMRS Carriers (“RCA-ARC”) believes that the Joint Board should carefully examine assertions that the current method for providing high cost support to competitive ETCs (“CETCs”) is broken. The system is working, and this proceeding is the appropriate time to place aside the misleading rhetoric that has characterized attacks on CETCs as somehow causing a problem. The FCC and the Joint Board have carried out their mandate from Congress to bring comparable telecommunications services and choices to rural America and to reform the universal system to provide for explicit, sufficient and predictable support mechanisms that will preserve and advance universal service.

In particular, RCA-ARC believes that the current methodology for providing high cost support to CETCs provides the appropriate incentives for competitors to enter and is a key to avoiding inefficient investment and so-called “duplicative networks”. As demonstrated herein, per-line support enables CETCs to measure whether competitive entry in a particular area makes sense. If it does, then a carrier applies for ETC status. If it does not, then a carrier will not apply. As more ETCs are designated, a subsequent carrier will have to judge whether to apply for ETC status based on the existence of other ETCs and the likelihood that support in such areas will be insufficient to support competitive entry.

The Joint Board should summarily reject calls to limit support to primary lines. Any mechanism that places the consumer in the middle of this debate is a non-starter. On an ongoing basis it will be impossible to determine which phone is “primary”, and carriers will have an enormous incentive to offer customers inducements to change their primary line designation. The result can only be an entirely new round of slamming that should be avoided at all costs.

Some commenters criticize states for not conducting rigorous ETC designation proceedings. Yet, most of the roughly 30 ETC petitions that have been granted over the past five years have been granted only after multi-year proceedings which are far more rigorous than an application to become a CLEC. In most states, the public interest analysis has been used by ILECs to justify substantial delays. Multiple rounds of discovery are the norm, even though the Act does not envision a lengthy factual inquiry. Moreover, inquiries into financial qualifications, prospective return on investment, effect on the size of the high cost fund, and other irrelevant issues waste valuable time, distract states from the core public interest analysis, and ultimately forestall competition. In the end, the consumer loses. What is needed are multiple ETCs in as many areas as possible to bring infrastructure development to rural areas and drive down costs to the consumer’s benefit. Judging from the current pace, these ETC designation cases will likely drag on for a decade.

In 2003, wireless companies will contribute over \$1.75 billion into the high-cost support fund, only about 5% of which is available to wireless carriers. A substantial portion of that contribution will go toward subsidizing wireline carriers with whom wireless carriers seek to compete. Going forward, there must be recognition that Congress commanded that support be made available on a competitively neutral basis and that wireless carriers are entitled to draw from the fund. At this early stage, it is simply not credible to pronounce the system in jeopardy and blame it on CETCs.

Even if the cost of constructing vital wireless networks in rural areas to provide rural consumers with the benefits of competition and wireless service is \$1 billion per year, RCA-ARC submits that such an amount is entirely appropriate. Today, the system is spending over three times that amount to support legacy wireline networks that are not growing, and rural consumers continue to face monopolies rather than competition.

Any decision that has the effect of slowing the development of rural infrastructure and competitive entry must be rejected in favor of competitively and technologically neutral solutions that improve the lives of consumers, bring important health and safety benefits to rural areas, and drive rural economic development.

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE COMMISSION MUST CONTINUE TO FOSTER A COMPETITIVE MARKETPLACE THROUGHOUT THE NATION.....	3
III.	ASSERTIONS THAT THE CURRENT SYSTEM IS BROKEN MUST BE TESTED.....	6
IV.	SUMMARY OF STATEMENT BY DON J. WOOD.....	12
V.	SUMMARY OF STATEMENT BY PROFESSOR JIM CHEN.	14
VI.	CETCs ARE TODAY BRINGING THE BENEFITS OF CRITICAL INFRASTRUCTURE DEVELOPMENT TO RURAL HIGH-COST AREAS AS A RESULT OF THE COMMISSION’S PRO-COMPETITIVE POLICIES...	15
VII.	HIGH-COST SUPPORT PROVIDES VITAL HEALTH AND SAFETY BENEFITS TO RURAL AREAS.	16
VIII.	HIGH-COST SUPPORT IN RURAL AREAS DRIVES ECONOMIC DEVELOPMENT.	18
IX.	CETCs SHOULD NOT BE SUBJECTED TO MONOPOLY-ERA REGULATION.	18
X.	PER-LINE SUPPORT BASED ON ILEC COSTS PROVIDES APPROPRIATE INCENTIVES FOR EFFICIENT COMPETITIVE ENTRY.	24
XI.	THE BILLING ADDRESS REPRESENTS THE MOST EFFICIENT MEANS OF DETERMINING CUSTOMER’S LOCATION.	26
XII.	CALLS TO SUPPORT ONLY “PRIMARY LINES” MUST BE REJECTED.....	27
XIII.	DISAGGREGATION MUST BE IMPOSED WHEN A CETC IS DESIGNATED.....	28
XIV.	SERVICE AREA REDEFINITION SHOULD BE CLARIFIED.	29
XV.	ILECS CANNOT CREDIBLY FIGHT ETC PETITIONS WHILE RETAINING THE RURAL EXEMPTION.	30
XVI.	CONCLUSION.	30

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Rural Cellular Association¹ ("RCA") and the Alliance of Rural CMRS Carriers² ("ARC") (collectively, "RCA-ARC"), by counsel and pursuant to the Commission's *Public Notice*, FCC 03J-1 (released February 7, 2003) hereby provides the following comments in the above-captioned proceeding.

I. Introduction.

RCA-ARC members provide commercial mobile services in many rural areas throughout the U.S. They have collectively petitioned for ETC status in 15 states and the territory of Guam and are well versed in the ETC designation process. Seven members have received ETC status and are currently receiving high-cost support covering operations in 6 states and Guam. The

¹ RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside.

² ARC is a group of CMRS carriers who are licensed to serve rural areas in Colorado, Nebraska, Guam, Virginia, West Virginia, Alaska, Michigan, Minnesota, Wisconsin, Iowa, Maine, Vermont, New Hampshire, Washington, Alabama, Kansas Oklahoma, and Oregon. ARC's membership is comprised of the following carriers (or their subsidiaries): Alaska DigiTel, LLC, Cellular South Licenses, Inc., Guam Cellular and Paging, Inc.,

ARC members who have been designated as ETCs have begun to receive support only within the past year, and none have been receiving support for over 18 months. Several have endured protracted litigation and appeals of ETC designations, in some cases lasting over two years.

As such, RCA-ARC is qualified to provide the Joint Board with comments on how the process for obtaining ETC status can be improved, how support is being used to further Congress' twin goals of advancing universal service and introducing competition to rural areas, and why the FCC has to date provided exactly the correct incentives for rural CMRS carriers – especially those that are invested in their communities, as are RCA-ARC members – to obtain ETC status and improve this nation's critical wireless infrastructure.

With these comments, RCA-ARC has attached presentations by Mr. Don Wood and Professor Jim Chen. Mr. Wood is an economic and regulatory consultant who has worked extensively at both the state and federal level on issues related to the cost of telecommunications networks and services, including universal service issues. Mr. Wood analyzes the current methodology for providing high-cost support to competitive carriers and makes recommendations for ensuring fund stability and competitively neutral application of universal service principles. *See Exhibit 1 attached hereto.* Professor Chen, who is the James L. Krusemark Professor of Law at the University of Minnesota, discusses the public interest and how regulators should apply it in ETC designation proceedings, based upon Congressional intent and the various cases flowing from the 1996 Act. *See Exhibit 2 attached hereto.* RCA-ARC summarizes their statements below and provides comments on other issues as requested by the Commission.

II. The Commission Must Continue to Foster a Competitive Marketplace Throughout the Nation.

It is axiomatic that a freely operating competitive marketplace is superior to regulation in its ability to generate solutions that are lowest-cost and most responsive to consumer demands. Today, consumers in urban areas enjoy quality telecommunications service and a choice of service providers, such that competitive market forces will provide most every consumer a true choice of local exchange service providers. The availability of competitive choices in those markets will soon displace the need for most vestiges of incumbent local exchange carrier (“ILEC”) regulation. The essential role of regulation at this stage of market development, especially in rural areas, is to help create an environment that permits – to the extent possible – the meaningful operation of competitive market forces.

The overarching principle contained in the 1996 Act that must drive all regulatory actions concerning the universal service mechanism is that:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

In numerous orders over the past seven years, the FCC has made great strides in advancing Congress’ vision, providing guidance on how ETC petitions are to be decided, removing implicit support from ILEC rates and access charges into explicit support mechanisms, revamping how non-rural ILECs receive high-cost support from the fund, committing to do the same for rural ILECs, and reaching out to tribal lands to extend universal service benefits to the Americans most in need at this time.

The primary reason Congress determined that multiple ETCs should be designated is that they recognized the public benefit of driving network development and innovation into rural areas. Without ETC status (or the removal of the rural exemption contained in Section 251(c) of the Act), a competitive carrier has no hope of providing a competitive service in most rural areas.³ Incumbents likewise have an insuperable “first in” advantage in terms of service quality, as their networks are fully developed. This forces a new unsupported entrant into the impossible position of having to construct an entire network before competing. In America, if any entrepreneur could make a business out of competing with subsidized ILECs in rural areas without high-cost support, surely after nearly 100 years, it would have happened by now.

In many state proceedings, argument is made that CMRS carriers are already competing with ILECs and that they do not “need” high-cost support to do so. In other proceedings, argument is made that CMRS service and wireline service are not competitors, but are complementary services and therefore each should receive support, but that CMRS providers should only receive support on the “complementary” part of its business. Both of these arguments are unsupportable.

RCA-ARC can find no evidence in the line count data made available on the Universal Service Administrative Company (“USAC”) web site that rural ILECs are losing lines as a result of competitive entry. In every ETC designation proceeding in which the issue has been raised,

³ *Verizon Communications, Inc. v. FCC*, 122 S.Ct. 1646, 1662 (2002) (“It is easy to see why [an ILEC] would have an almost insurmountable competitive advantage not only in routing calls within the exchange, but, through its control of this local market, in the markets for terminal equipment and long-distance calling as well.”). See also *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, 15506-07 (1996) (“*Local Competition Order*”) (“The present universal service system is incompatible with the statutory mandate to introduce efficient competition into local markets, because the current system distorts competition in those markets. For example, without universal service reform, facilities-based entrants would be forced to compete against monopoly providers that enjoy not only the technical, economic, and marketing advantages of incumbency, but also subsidies that are provided only to the incumbents.”)

RCA-ARC has discovered that ILEC line counts have been steadily increasing over the past several years. ILEC penetration in rural areas remains at or near 100%, which undercuts any rational argument that CMRS or other technologies are already providing competition that removes the incumbent's monopoly control of the local exchange market.

Likewise, RCA-ARC members do not believe that their service offerings are merely complementary to wireline service in areas where a CMRS carrier's signal strength is sufficient to permit a consumer to choose wireless as their primary service. In urban areas, Verizon and other large ILECs are reporting significant wireless substitution that is reducing access line counts. RCA-ARC members all report the same phenomenon, but only in the densely populated portions of their service areas – precisely those areas where signal strength is such that consumers can use wireless throughout the areas where they live, work and play.

Given the opportunity, CMRS carriers can provide competitive alternatives that Congress intended rural consumers to have. In low-cost, densely populated areas, those alternatives are available. In most rural areas, however, the mere presence of CMRS carriers in the market is anything but dispositive with respect to the issue of whether network quality permits a consumer to have a true choice of service provider. If a consumer perceives wireless as a complementary communications tool, because it only works on major highways and in downtown areas, then that consumer is denied the ability to use a wireless phone in the same manner as those living in urban areas.

At a recent Senate Subcommittee hearing, Mr. Carson Hughes of Cellular South Licenses, Inc. testified that in rural Mississippi, his company's customers perceive their service as a potential substitute for landline service precisely because the company has used high-cost support to drive infrastructure development into areas that are not being served by other wireless

carriers – notwithstanding that the FCC has licensed at least seven wireless carriers throughout the state’s rural areas.⁴

RCA-ARC urges the Joint Board and the Commission to continue to be guided by principles of competitive neutrality that mandate that universal service support be sufficient to provide customers with service – not to support any one carrier or technology. In the short term, the universal service fund is likely to grow if rural ILECs remain on the modified embedded cost system and if the FCC fulfills its Congressional mandate to remove implicit subsidies from the system and place them in explicit support mechanisms. To the extent that universal service funds go to competitive ETCs (“CETCs”) who are today bringing competitive choices to rural areas and improving critical wireless infrastructure, it should be viewed as a positive. While the fund may grow in the short term, it is only through moving rural ILECs to forward-looking costs and through competitive pressure that rural ILECs will improve efficiencies and eventually reduce the need for support in many rural areas.

III. Assertions that the Current System is Broken Must be Tested.

The impetus for this proceeding was two petitions filed in 2002, one by the National Telecommunications Cooperative Association (“NTCA”) and one by ACS Fairbanks, Inc., seeking changes in the FCC’s high-cost support system.⁵ Over the past year, ILEC trade organizations and affected companies have pressed Congress and the FCC for protectionist changes based upon unsubstantiated claims that the system is “broken”. They have convinced the

⁴ See Statement of Carson Hughes, Cellular South Licenses, Inc., Before the Subcommittee on Communications, Committee on Commerce, Science and Transportation at p. 2 (April 2, 2003). RCA-ARC notes here that former Rural Task Force (“RTF”) member William Gillis agreed with Mr. Hughes that it is a sound public policy goal to promote quality wireless networks in rural areas.

⁵ See National Telecommunications Cooperative Association Petition for Expedited Rulemaking, filed July 26, 2002; ACS Fairbanks, Inc., Petition for Declaratory Ruling and Other Relief Pursuant to Section 254(e) of the Communications Act, filed July 24, 2002.

Senate Subcommittee on Communications to hold two hearings within the past year, most recently on April 2, 2003.

RCA-ARC members welcome this opportunity to examine the current system and explore ways in which it can be improved. At the outset, however, the Joint Board must determine whether the existing high-cost system is in need of repair before making changes. This is especially true in such a complex area. The last time the Joint Board took up this matter, it established a Rural Task Force (“RTF”) to examine issues in more detail. The RTF produced six white papers and, although not resolving all issues, engaged in a deliberative process worthy of such an important and complex subject.

Taking various ILEC claims at face value, one would conclude that the high-cost system is going bankrupt, that wireless ETC designations are the cause, and that supported competition is ruining the system. Nothing could be further from the truth. For example:

Myth: CETCs are responsible for a “ballooning” high-cost support fund and increasing the contribution factor.

Fact: In the year 2000, wireless carriers received \$2 million in high cost support. In 2003, wireless carriers are expected to receive \$102 million in high cost support. During this same time frame, high cost support to rural ILECs soared from \$2.1 billion in the year 2000 to almost \$3.2 billion in 2003. In other words, while wireless carriers have collected an additional \$175 million in high cost support over the past three years, during the same three-year period, ILECs have increased their take from the fund by \$2.7 billion.

RCA-ARC urges the Joint Board to take whatever steps are necessary to ensure that there will be sufficient high-cost support in the future to support quality telecommunications service to

consumers throughout the country. However, RCA-ARC also urges the Joint Board to test assertions made by ILEC industry trade groups as to causes for the increase in the high-cost support fund and predictions for its future growth. One year ago, so-called industry experts predicted the future impact of CMRS carriers obtaining ETC status to be \$1 billion annually. Apparently, that figure does not have adequate shock value, because now the estimate has risen to \$2 billion.⁶

Although not raised by the Commission in its *Public Notice*, RCA-ARC believes issues such as disaggregation of support, moving rural ILECs to a forward-looking cost methodology, and full portability must be part of any discussion on revamping the current system. In 1997, the Commission declared:

[W]e today establish that the level of support for service to a particular customer will ultimately be determined based upon the forward-looking economic cost of constructing and operating the network facilities and functions used to provide that service....forward-looking economic cost best approximates the costs that would be incurred by an efficient carrier in the market....the use of forward-looking economic cost as the basis for determining support will encourage and permit economically correct levels of entry, investment, and innovation [and] helps us to ensure that we are providing the minimum support necessary for efficient provision of the supported services.⁷

Although the Commission did succeed in moving non-rural carriers receiving high cost support (in areas that are non-rural in name only) to a forward-looking system, it determined in 2001 to move rural ILECs to a modified embedded cost methodology for a five-year transition period.⁸ RCA-ARC believes this is the time for the Joint Board to be considering what is to

⁶ See, e.g., Testimony of Matt Dosch of Comporium Group before Senate Subcommittee on Communications (April 2, 2003) at p. 3.

⁷ *Federal-State Joint Board on Universal Service, First Report and Order*, 12 FCC Rcd 8776, 8888 (1997).

⁸ *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth*

happen to rural ILECs in 2006 and what effect the modified embedded cost formula is having on the fund, the development of competition, and weaning rural ILECs away from embedded costs. If controlling growth in the fund is a goal, this issue is primary in that ILECs receive over 95% of the \$3.3 billion in available high-cost funds.

Myth: CETCs do not pay their fair share into the high-cost fund.

Fact: As a result of the FCC's recent decision to increase the "safe harbor" contribution factor to 28.5% for CMRS carriers, RCA-ARC estimates that each wireless line will contribute approximately \$1.00 per month. Given that there are nearly 150,000,000 wireless lines in service today nationwide, the wireless industry will contribute close to \$1.8 billion per year immediately, and the number will grow each year. Today, less than 5% of those funds are available to wireless ETCs, and the majority subsidizes rural ILECs with whom wireless carriers seek to compete.

Wireless carriers contribute their fair share and are entitled to draw from the fund.

Myth: CETCs are getting a "windfall" under the current system.

Fact: It is very expensive for wireless carriers to serve many rural areas, especially those that are sparsely populated, mountainous or heavily foliated. In addition, CMRS carriers generally receive almost no switched-access revenue from interexchange carriers, and their termination charges are generally equal to those of ILECs even though CMRS termination costs are often several times higher than ILEC termination costs. Rural ILECs continue to receive implicit support in their rates and access charges that are not available to CMRS carriers. Wireless ETCs generally have far fewer lines from which to recover their costs, resulting in significantly higher per-line costs than rural ILECs have. Thus, at the outset of becoming an

ETC, before sufficient infrastructure is built, it is most unlikely that a CETC's costs will be covered by the high-cost support mechanism.

Myth: Rural consumers are not interested in competitive choice, are satisfied with their wireline phones, and will be harmed if competitive entry threatens an ILEC's viability.

Fact: Consumers in rural areas have the same interest as urban consumers in having competitive choice, which brings incentives for both the incumbent and new entrant to improve service quality, deploy more advanced services, and offer service at lower rates. It has been RCA-ARC's consistent experience that ILECs respond with larger local calling areas, lower toll rates, or other improvements in response to competitive challenge. Congress long ago declared it unacceptable to presume that consumers in rural areas do not "need" choices and competitive markets – and that incumbents should be shielded. If an ILEC withdraws as an ETC because of competitive entry, then other ETCs will be available to step in. If, as a result, quality facilities can be provided at or below the ILEC's costs, then the public will be well served.

Myth: Wireless carriers charge higher prices than do ILECs and should, therefore, be subject to affordability requirements and "unlimited local minute" offerings to protect consumers.

Fact: When discussing wireless rates, ILECs use apples-to-oranges comparisons that have been rejected across the country. Basic local exchange service rates in rural areas are heavily subsidized and do not include intra-LATA and inter-LATA toll charges. The more appropriate comparison is average revenue per consumer, which for ILECs runs between \$60 and \$90 per month. The figure for wireless carriers is currently around half that of the ILECs and has fallen significantly over the past 15 years.⁹ Rural wireline carriers provide consumers the

⁹ See *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Seventh Report*, FCC 02-179 (rel. July 3, 2002) at p. 23 ("*Seventh CMRS Competition Report*").

ability to make unlimited calls to only a few thousand, or sometimes a few hundred, numbers within a very small local calling area. Wireless carriers have consistently larger local calling areas that offer consumers compelling value. When possible, consumers are migrating long distance and intra-LATA toll charges to wireless to avoid high intra-LATA toll. That is a market fact that means only one thing – consumers find ways to lower their costs when choices are available.

Myth: Providing high cost support to competitors creates artificial competition.

Fact: Providing support solely to ILECs cements artificial monopolies. Congress rejected this myth seven years ago in the 1996 Act, the Commission has consistently rejected it since, and it was resoundingly affirmed in the *Alenco* case.¹⁰ As shown below, CETCs are delivering improved infrastructure to rural areas that not only provide competition, but vital health and safety benefits, economic development opportunities, Lifeline and Link-Up benefits, and in many areas, services that would not otherwise be available in the absence of support.

Myth: The current method for providing high cost support to CETCs will result in duplicative networks and stranded plant.

Fact: As shown below, the system of only providing per-line support to a carrier when it has a customer provides exactly the appropriate incentive for a competitor to construct networks wherever it makes sense – and not beyond. If there are areas in which local telephone service is a natural monopoly, they will remain so under the current system. Incumbents will garner very high levels of support in those areas and have it to themselves.

IV. Summary of Statement by Don J. Wood.

In Exhibit 1, Mr. Wood sets forth an economic analysis supporting the Commission's need to take the long-term view of universal service. To summarize:

- A purely short-term, static analysis of the cost of providing sufficient high-cost support to rural areas must be rejected. There are a number of long-term benefits that will accrue to the public by virtue of supporting competitive entry in rural areas throughout the nation. Among them are improved efficiencies of all networks – most importantly, that of the incumbent, whose receipt of support based on a modified embedded cost methodology sends incorrect market signals and only perpetuates inefficient operations.
- Ensuring the availability of services and affordable pricing has historically been equivalent to the goal of ensuring the continued operation of rural ILECs. The Act and the ongoing development of new technology require a shift away from this paradigm, even in rural areas. It cannot and should not be assumed: (1) that the characteristics of a rural service area dictate service by a single provider, (2) even if the area exhibits the characteristics of a natural monopoly, that the wireline network of the ILEC represents the lowest-cost solution for serving the area, or (3) that the ILEC cannot operate more efficiently than it currently does or cannot operate at the level of efficiency demanded by competitive market forces simply because it is providing service in a rural area.
- While in the short run, preserving the continued viability of rural ILECs may be an important goal to ensure stability, this short-term goal must not replace the stated goals of the Act or become, in and of itself, a long-term objective. Appropriate transitional measures are in place and already provide ILECs with ample protection. The long-term goal has been set by Congress – to ensure consumer benefit, not incumbent benefit.
- Growth in the fund to date has been a predictable outcome of sensible universal service reform and has overwhelmingly benefited rural ILECs. The Commission must permit competitive entry and get beyond short-run “growing pains” in order to achieve the maximum benefits to rural consumers and a fund whose size is minimized over the long run. Without competitive entry, portability, and forward-looking cost analysis, rural ILECs do not have any incentive to improve efficiencies and lower their need for support.

¹⁰ See *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 619-20, 622 (5th Cir. 2000) (holding that universal service is intended to “provide sufficient funding to customers,” not to carriers, and that the Act does not guarantee ILECs or any other carrier “protection from competition.”).

- Different customers will require different levels of competitive service to determine whether wireless service is a substitute for wireline. It is, therefore, nonsensical to argue that a wireless carrier is already providing service in an area without support and does not “need” support. Although a wireless carrier may be serving a portion of an area quite well, it is likely to have marginal coverage in other areas, or perhaps no coverage in some areas (“dead spots”). In such areas, high-cost support is the difference between offering customers a service that is of sufficient quality to make it a potential substitute and offering a service that does not meet this threshold.
- If accepted, the argument that many rural areas cannot support more than one provider is likely to institutionalize existing inefficiencies and restrict rural consumers to monopoly wireline service and corresponding monopoly prices and practices. In the short run, this may reduce growth in the fund that represents support to CETCs. As a long-term program management strategy, however, a decision to continue to support inefficient networks without an incentive to become more efficient is a very expensive proposition and will result in a fund that is larger than necessary.
- The current rules for providing high-cost support do not create an advantage for the CETC. It is important to understand that if a CETC’s costs are higher, whether because it operates inefficiently, uses a less efficient technology for the area in question, or both, a CETC that receives support based on the IETC’s costs will not find it financially viable to enter the geographic market and invest in facilities. This is the desired result: a less efficient provider should not be encouraged to enter, nor should its entry be supported. However, when a CETC’s costs are equal to or lower than the IETC’s, then it is likely to enter and should be encouraged to do so. Lower costs will inure to the consumer and reduce the need for high-cost support in the long run.
- During the transition period during which competitive networks are being constructed, the incumbent’s costs is the appropriate benchmark. Once competitive networks are constructed, the better benchmark is the lower-cost provider, which encourages efficiency and sends the correct signal to the marketplace.
- If a CETC’s costs are lower than an IETC’s, it will force the IETC to become more efficient. If an IETC refuses to do so during the transition period, it may be unable to retain its ETC status or remain in business long term. This is a natural consequence of competitive markets and Congress has not guaranteed rural ILEC survival. In reality, rural ILECs are well positioned to improve efficiencies, exploit the natural advantages of a wireline network for data, and if wireless is a lower cost alternative – use it to compete.

V. Summary of Statement by Professor Jim Chen.

In Exhibit 2, Professor Jim Chen sets forth his statement on the competitive ETC designation process, in particular the public interest analysis under Section 214(e)(2) of the Act, and the alleged role of competitive ETC designations in the growth in the size of the high-cost fund. To summarize:

- Far from being an open-ended mandate for unbounded administrative decisionmaking, the public interest standard must draw its meaning from the statutory provisions that govern the federal universal service program. Within the ETC designation process, three elements of the public interest are paramount: neutrality as between incumbent and competitive carriers, technological neutrality, and rural-urban parity.
- The legislative history of the 1996 Act evinces congressional sensitivity to the erosion of “near-guaranteed returns” under deregulation and the need for coordinating universal service support with “an orderly transition from a regulated market to a competitive and deregulated market.” *Id.* Congress could not have been clearer in linking the preservation of universal service with its desire to promote “competition for local telephone service by cable, wireless, long distance, and satellite companies, and electric utilities, as well as other entities.”
- Opponents of CETC designations frequently suggest that sparse population spreads costs so thinly in rural areas that competitive carrier capture of ILEC lines would increase the per-line cost of serving the remaining lines increases and that this “harm” to an incumbent carrier outweighs any benefits derived from competition. In other words, the more remote the area, the more important it is to have exactly one carrier. Taken to their logical conclusions, these arguments counsel *per se* rejection of *all* petitions for CETC designation in rural areas. Such a refusal to embrace competitive entry into rural markets, however, is tantamount to rejecting one of the fundamental tenets of the federal universal service program: rural-urban parity.
- Incumbent carriers routinely decry the introduction of competition in rural markets, especially through the extension of universal service support to competitive carriers, as a form of subsidized, “artificial competition.” Incumbent carriers cannot simultaneously condemn policies extending subsidies to their competitors and demand the continued flow of support to their own coffers. When an incumbent carrier depends so heavily upon public largesse, a public decision to subsidize a competitor is no more “artificial” than the incumbent’s dominance of that market is “natural.”

- To treat wireless-for-wireline substitution as a threat to the solvency of the Universal Service Fund and therefore a public interest consideration *against* competitive entry would turn deregulation on its head. Under no circumstances should the cost-effectiveness of a prospective ETC's service offerings should be counted as a *negative* in the applicable public interest analysis. The Commission has observed, squarely to the contrary, that a competitive ETC's ability to extend service to a remote area at low cost should be considered a strong contribution to the public interest.
- The primary driver of allegedly excessive growth in the high-cost component of the USF is in fact the ongoing policy of basing high-cost support to all ETCs in rural areas on the IETC's embedded costs. As long as the Commission adheres to its embedded-cost methodology for computing high-cost support to rural IETCs, interpreting the term "public interest" logically forecloses further ETC designations whenever a competitive carrier would capture at least some lines previously served by the incumbent. The inevitability of this market-driven outcome renders absurd any reading of section 214(e)(2) and (6) in which the presumed financial impact of additional ETC designations is deemed to be detrimental to the public interest.
- The Joint Board should recommend that the Commission amend its rules to clarify the scope of the "public interest" inquiry required by section 214(e)(2) and (6). Under no circumstances should a state commission, in performing its tasks under section 214(e)(2), consider the financial impact that the designation of an additional ETC in a rural market may have on the solvency or stability of the USF. Because this issue will ultimately be addressed through a rulemaking process that has begun with the Joint Board's *Public Notice*, the Commission should maintain its existing practice of refraining from any consideration of the potential financial impact of a CETC designation on the USF.
- The Commission should amend its rules to apply the same forward-looking methodology for computing high-cost support to IETCs in rural and nonrural service areas alike, and the Commission should *not* amend its rules to vary support according to an ETC's technological platform or to cap the amount of high-cost support available to CETCs. To the extent that the Joint Board may wish to recommend changes in the Commission's current rules, it should consider instead the possibility of basing high-cost support, on a competitively neutral basis, upon the costs of a lowest-cost provider of supported telecommunications services to a rural market.

VI. CETCs Are Today Bringing the Benefits of Critical Infrastructure Development to Rural High-Cost Areas as a Result of the Commission's Pro-Competitive Policies.

Some RCA-ARC member companies have begun to receive high-cost support and, even in the early stages, are demonstrating the benefits to consumers.

For example, Cellular South Licenses, Inc. (“Cellular South”) serves over 38,000 square miles of rural territory in Mississippi, an area larger than Indiana. Since it began receiving high-cost support in early 2002, the company has accelerated the construction of a CDMA 1XRTT network at 169 cell sites and its switching center in order to modernize and bring the highest-quality service to rural Mississippi. The company also added 34 new sites in 2002 and has another 48 planned for 2003. The new CDMA network has expanded the company’s system capacity so that it can now offer consumers a rate plan with unlimited local calling throughout all of Mississippi and Memphis, at a price of \$49.99 per month. Other rate plans are offered at lower prices, but for consumers accustomed to high-intra-LATA toll charges, this represents a compelling value.

N.E. Colorado Cellular, Inc., has used high-cost support to accelerate its upgrade to digital technology in rural northeast Colorado. It has also offered consumers a basic universal service (“BUS”) plan that competes directly with rural ILECs on price, quality, and service. Over 500 consumers have chosen the BUS offering in the first year it was offered.

Other RCA-ARC members are awaiting grants of ETC status or have just begun to receive support and, therefore, measurable results are not yet available. What is apparent is that in just over a year, rural carriers that have received grants are making great strides in providing rural areas with improved wireless infrastructure so that rural consumers may have choices similar to those available in urban areas. As each year passes and more carriers obtain support, the benefits will multiply.

VII. High-Cost Support Provides Vital Health and Safety Benefits to Rural Areas.

In urban areas, it is taken for granted that in most locations one can complete a wireless call in an emergency. In a very short time, consumer expectations for wireless have risen

enormously, to the point where the failure to complete an important health or safety call is newsworthy. In many rural areas served by RCA-ARC members, expectations are often very different. Consumers understand that wireless phones work in larger towns and on major roads, and not much beyond that. Unlike urban dwellers, many rural consumers have traditionally seen mobile phones more as ancillary communications tools, rather than one that can be counted on to provide primary telephone service.

While the national press has recently focused on the benefits of E-911 service and the need to accelerate its deployment, RCA-ARC believes the best thing the FCC can do for rural America is to ensure that critical infrastructure is developed to permit callers to complete 911 calls. Without a cell site, there is no 911 service, and an E-911 system upgrade that gives public safety answering points (“PSAPs”) the ability to locate a 911 caller will not help someone who cannot complete the call. Going forward, the high-cost mechanism must continue to provide incentives to wireless carriers to invest in infrastructure and increase the territory in which customers can initiate emergency calls.

To use the example of Cellular South, its new cell site construction is rapidly filling in service gaps and extending its reach in rural areas that it would not have reached for many years, if ever. It is self-evident that the number of important health and safety calls, such as those made by doctors, volunteer firemen, police, and first responders, is increasing with every new cell site that Cellular South constructs in rural areas.

RCA-ARC can think of few achievable goals more important than driving investment into rural areas that will improve critical infrastructure. Encouraging wireless carriers to become ETCs and ensuring that funds are spent on network construction is critical to delivering this vital benefit to rural America.

VIII. High-Cost Support in Rural Areas Drives Economic Development.

As a rule, our nation's rural areas have long trailed cities in terms of economic development. Use of high-cost support to improve infrastructure has significant economic impact on small communities and is a key to closing that gap. Today, many companies and people consider rural areas as more attractive places to locate and to live. One of the major factors involved in selecting a community is the quality of its telecommunications infrastructure.

Wireless service is a very important factor in the equation. More and more companies and people today rely on wireless phones to improve efficiencies and manage their businesses, especially in rural areas where the distances between job sites can be large, and in the case of farms and ranches, the job site itself can be quite large. Any policy that cements wireline monopolies in rural areas and retards the development of wireless infrastructure only widens the gap between rural and urban areas, in direct contravention of Congress' express goal.

IX. CETCs Should Not Be Subjected to Monopoly-era Regulation.

The Act clearly prohibits states from imposing rate or entry regulation on CMRS carriers, even as a condition of ETC status.¹¹ Moreover, federal policy has long favored forbearance from imposing burdensome regulations on competitive carriers, since many such regulations were conceived to protect consumers from monopoly behavior.¹² Nonetheless, it has been RCA-ARC

¹¹ See, e.g., 47 U.S.C. §§ 253(b), (c), 332(c)(3). See also *Petition of the State Independent Alliance and Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service*, Memorandum Opinion and Order, WT Docket No. 00-239, FCC 02-164 at ¶¶ 30-33 (rel. Aug. 2, 2002) (recon. pending) (“*Kansas BUS Order*”).

¹² See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411, 1421 (1994) (“*CMRS Second Report and Order*”) (“Competition, along with the impending advent of additional competitors, leads to reasonable rates. Therefore, enforcement of Section 203 is not necessary to ensure that the charges, practices, classifications, or regulations for or in connection with CMRS are just and reasonable and are not unjustly or unreasonably discriminatory”). See also

members' consistent experience that ILECs request state commissions to add regulatory burdens to CMRS carriers as a condition of obtaining ETC status. These ILECs claim that such burdens are necessary to ensure that CMRS carriers will meet their obligation to the public and that regulatory "parity" and competitive neutrality demand it. Unfortunately, many CMRS carriers, including some RCA-ARC members, have agreed to be regulated in ways that are likely impermissible and subject to federal preemption, in exchange for reaching a settlement of litigation or in the course of favorable ETC decisions. In the latter case, it has been simpler to comply and move on rather than appeal an otherwise favorable decision to the courts and risk alienating state regulators who will continue to exercise authority going forward.¹³ RCA-ARC believes that the Joint Board and the Commission should take appropriate steps to ensure that state regulators do not impose rate and entry regulation, or other requirements that are suited only to incumbents, as a condition for CETC status.

"Competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another and neither unfairly favor one technology over another."¹⁴ When analyzing whether a regulation or regulatory scheme is competitively neutral, the appropriate inquiry is "whether the *effect* of the legal requirement, rather than the method imposed, is competitively neutral."¹⁵ In other words, it is not enough to

or in connection with CMRS are just and reasonable and are not unjustly or unreasonably discriminatory"). See also *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor: First Report and Order*, 85 FCC 2d 1, 31 (1980).

¹³ For example, some states require compliance filings that include tariffs. Even informational tariffs constitute illegal ratemaking because it is axiomatic that a carrier cannot react in the marketplace without amending the tariff. In the case of tariffs for basic service, some states require approval rights before rates can be raised.

¹⁴ *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8801 (1997) ("First Report and Order").

¹⁵ *Western Wireless Corp., Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, 15 FCC Rcd. 15168 at ¶ 22 (2000) ("South Dakota Preemption Order") ("We are

conclude that because the same rules apply to two carriers the regulatory scheme must therefore be competitively neutral. If, (1) a CETC and an ILEC are the only two competitors in a market, (2) neither is a monopoly, and (3) both receive high-cost support in the same manner, imposing substantially identical regulations would likely have competitively neutral effects. However, none of these factors are present in rural America.

In each market an RCA-ARC member serves, it must contend with multiple wireless competitors, most of which are formidable.¹⁶ Generally, rural CMRS carriers do not today compete with rural ILECs because their networks are not yet strong enough to cause significant numbers of customers to “cut the cord” with their ILEC service. Thus, the effect of the proposed regulatory scheme must be measured not only against the ILEC, but against all of the CETC’s competitors. By taking on additional regulatory responsibilities, will the CETC be disadvantaged? Will the substantial additional regulatory burden requested by the rural ILECs unfairly provide a competitive advantage to the CETC’s wireless competitors? Will the CETC face operating costs and other burdens that its wireless competitors will not? Will additional requirements result in true consumer benefits or simply cause funds from the high-cost support mechanism to be used for regulatory compliance? And finally, do the requirements constitute preempted rate or entry regulation? These and other questions must be asked before it can be determined whether a proposed rule is competitively neutral.

not persuaded that such a requirement is competitively neutral merely because the requirement... applies equally to both new entrants and incumbent LECs.”).

¹⁶ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Seventh Report*, 17 FCC Rcd 12985, 13024 (2002) (“*Seventh CMRS Report*”) (citing reports by rural cellular operators of “competitive pressures created by the very existence of nationwide operators.”).

Rural ILECs contend that the provision of high-cost support justifies “equivalent regulation” for ILECs and CETCs. Not so. Rural ILECs are monopolies. Each enjoys a virtually insuperable advantage that cannot be challenged without high-cost support.¹⁷ Even with support, a competitor must begin from scratch while the ILEC begins with 100% market share. Each regulatory burden placed on a competitor impedes its ability to gain market share.

Asymmetrical regulation of two competitors has a competitively neutral effect if one is a monopoly. For years, AT&T was forced to continue being regulated as a monopoly until its competitors took enough market share to cause the FCC to detariff and largely deregulate the interexchange marketplace.¹⁸ Likewise, RCA-ARC advocates deregulation of ILECs when they no longer pose a threat to consumers as a result of their monopoly power.

Although the FCC long ago determined that COLR obligations should not be imposed on CETCs, ILECs continue to believe imposition of such obligations would be competitively neutral.¹⁹ This is not true, for the simple reason that CETCs are not permitted to recover their costs of providing service as ILECs do. For example, if an ILEC must construct a \$300,000 facility to serve one customer under a COLR obligation, it is permitted to include that cost in its rate base and recover it from the high-cost fund in future quarters.²⁰ Under the current high-cost system, a CETC that receives a request for service requiring a similar investment could only

¹⁷ See *Local Competition Order*, *supra*, 11 FCC Rcd at 15506-07. See also *Verizon*, 122 S.Ct. at 1662.

¹⁸ See *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Order on Reconsideration and Erratum*, 14 FCC Rcd 6004, 6005-06 (1999).

¹⁹ *First Report and Order*, *supra*, 12 FCC Rcd at 8856-58.

²⁰ Notwithstanding COLR obligations, wireline carriers have the option of challenging a consumer’s request to extend service, and they often do. See, e.g., Petition of Verizon Northwest, Inc., for Waiver of WAC 480-120-071(2)(a), Docket No. UT-011439, Twelfth Supplemental Order, (Wash. Util. & Transp. Comm’n, April 23, 2003) (granting Verizon’s request for a waiver of its obligation to construct facilities, despite a state mechanism that would have fully reimbursed its costs).

recover the *per-line* support amount for the one customer served, which in most cases would never be sufficient to recover the costs, (e.g., a monthly support level of \$40 per line would yield \$300,000 in 625 years). Since no carrier would ever enter a market under such circumstances, imposing COLR obligations on CETCs would not be competitively neutral and would likely constitute an impermissible barrier to entry that would be subject to preemption by federal law. *See* 47 U.S.C. §§ 253(d), (e), 332(c)(3)(A).

In addition, ILECs continue to receive implicit high-cost subsidies through their access charges that CETCs cannot obtain under any circumstances. It is for these reasons that so-called equivalent regulation is unlikely to have a competitively neutral effect. The FCC understood this when it declined to impose ILEC-style regulation on wireless CETCs seven years ago:

[I]mplementing federally-imposed service quality or technical standards for promoting universal service would be inconsistent with the 1996 Act's goal of a 'pro-competitive, de-regulatory national policy framework' because of the administrative burden on carriers resulting from the compilation and preparation of service quality reports that would be required for the Commission to assess whether carriers were meeting those standards... Nor do we...require state commissions to impose the same quality standards on competitive LECs that are imposed upon incumbent LECs...***[A]s competition in the telecommunications industry increases, consumers will select their providers based on, among other factors, the quality of service offered.***²¹

[I]mposing additional burdens on wireless entrants would be particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireless service.²²

²¹ *First Report & Order, supra*, 12 FCC Rcd at 8832-33 (emphasis added).

²² *Id.* at 8882-83.

While the FCC and the courts have authorized states to regulate terms and conditions of wireless service that are not rate or entry regulation or equal access,²³ all such rules must be competitively neutral in their effect. Placing significant additional regulatory burdens on a carrier that has no market power, no pricing power, and operates in a highly competitive industry will not result in a net benefit to consumers. All carriers within the same class should be subject to the same rules. Notwithstanding a grant of ETC status, a CMRS carrier continues to compete with other CMRS carriers, and must not be placed at a disadvantage simply because it is receiving high-cost support. The better course is to monitor the ILEC and when its market is competitive, reduce its regulatory burdens so that it may compete as well.

Generally, CMRS carriers are already in substantial compliance with the state service quality regulations applicable to ILECs, and that has been accomplished without any special regulatory requirements being imposed. Carriers in a competitive market cannot afford to act like a monopoly because its customers have a choice of service provider. If a customer does not like a wireless CETC's service, they may choose another wireless carrier or the ILEC's service. Most ILEC customers in rural America do not have the same choice and therefore regulation must take the place of a competitor.

RCA-ARC firmly believes that when a carrier applies for *federal* ETC status, states should not be permitted to place additional service quality standards on ETCs. Provided that a particular set of standards does not constitute rate regulation or a barrier to entry, states should be permitted to enact such standards on all CMRS carriers in rulemakings of general applicability. Otherwise regulatory mischief is the certain result. For example, if a state imposes an ILEC service quality requirement on a wireless CETC, and its customer calls the state PUC to complain about a violation,

²³ See *Kansas BUS Order*, *supra*, at ¶¶ 30-33.

the PUC would first have to ask the customer whether he is a consumer of the CETC. If so, the complaint could be heard. If the customer subscribes to a non-ETC wireless service, the complaint would not be heard. From a consumer's perspective, this is a grossly inefficient way to obtain redress.

"The Telecommunications Act is not a ratemaking statute seeking better regulation. It is a deregulatory statute seeking competition."²⁴ Moreover, because of the inherent advantages of incumbency, Congress intended in the 1996 Act "to give aspiring competitors every possible incentive to enter local retail telephone markets, short of confiscating the incumbent's property."²⁵ RCA-ARC urges the Commission to adopt a pro-competitive approach so as to encourage competitors to challenge monopoly ILECs and to provide states with clear guidance that onerous ILEC-style regulation of CMRS carriers may not be imposed as a condition of ETC status.

X. Per-Line Support Based on ILEC Costs Provides Appropriate Incentives for Efficient Competitive Entry.

In his statement attached hereto as Exhibit 1, Mr. Wood explains in greater detail why the current per-line methodology provides appropriate market signals to all participants during this transition phase. In RCA-ARC member's experience, practical business decisions continue to drive network construction after attaining ETC status, and appropriate per-line support levels ensure that uneconomic investments are not made. For example, some ILECs have challenged ETC petitions on the ground that the petitioner is a new entrant, does not have a strong network, and cannot bring new services to areas that are already being served by other wireless carriers

²⁴ *Verizon*, 122 S.Ct. at 1689 (Breyer, J., concurring in part and dissenting in part).

²⁵ *Id.* at 1661 (opinion of the Court).

that have constructed networks without the benefit of ETC status. Holding aside other reasons why that challenge is legally deficient, some commenters assert that a wireless company that has constructed more cell sites and covers more territory is more “deserving” of ETC status and high cost support.

Under the current system, that is exactly what happens. If both carriers are ETCs, the one with the larger network presumably serves more customers and reaches beyond low-cost areas. If support were disaggregated, the newcomer would receive little or no support because presumably its few sites are pegged in the most profitable low-cost areas. And if the newcomer believes it makes economic sense to expand its system, it must first build and then attract customers in order to gain support. No rational businessman is going to construct cell sites in an area that will not provide a return on investment. Even with COLR obligations, ILECs are not required to do so.

Now let’s look at what is likely to occur if CETCs are paid on their own costs. Presumably, if the newcomer constructed additional network facilities to “compete”, any method for paying high-cost support based on network costs would ensure that the competitor could earn a sufficient return on investment. In such a case, it is possible, if not likely, that inefficient investments would be made based on the ability to get high-cost support, irrespective of whether a business case can be made for competitive entry. In RCA-ARC’s view, this is exactly the wrong result. ILECs may be correct that there are areas where an ILEC’s wireline facilities are a natural monopoly – and they should be amply compensated for serving them through the high-cost system. Unfortunately for ILECs, if wireless carriers receive support based on a wireless cost model, the relative youth of wireless networks may lead to a gold-rush mentality as carriers sweep into rural areas on the promise of high-cost funding sustaining bad business decisions. On

the other hand, if support is portable and is dependent upon having a customer, then all carriers become customer-centric, which is exactly the appropriate incentive to place upon service providers. It serves the public by enabling competitors to drive innovation and quality of service, rather than having it imposed by regulators.

XI. The Billing Address Represents the Most Efficient Means of Determining Customer's Location.

The current rule requiring a mobile customer's billing address to be used to determine its location for high-cost support purposes should be retained because it is at least as accurate as alternative methodologies, and ensures that available high-cost funds go to services and facilities – not program administration. RCA-ARC does not believe that changing to a residence address or other requirement will improve the ability to target subscribers within a particular ILEC cost zone. Currently, software exists that permits a CETC to “geocode” subscribers within a particular area with upwards of 98% accuracy. The remaining two percent of customer locations can be examined manually, effectively bringing the accuracy rate to 100%.²⁶

This level of accuracy is dependent, in part, on the quality and reliability of the map delineating cost-zone boundaries. What will improve the ability to target subscribers is an FCC requirement that ILECs who disaggregate support submit accurate and legible cost zone maps in a consistent electronic format so that competitive ETCs are able to easily determine the appropriate cost zones for customers. RCA-ARC member companies have filed letters with USAC requesting some ILECs to submit better maps so that subscriber locations can be geocoded so as to reduce the number of subscribers that must be manually located.

²⁶ One RCA-ARC member that was audited by USAC reports that even with a relatively simple billing address requirement that is easy to administer and audit, the audit process was time intensive.

Under the current system, there is little opportunity or incentive for arbitrage because high-cost support must be used to construct facilities in high-cost areas. Mobile consumers who roam outside of the service area or place long distance calls must pay extra for those services – their cost is not subsidized by the high-cost system. Moreover, the rapid growth of users within the high-cost area places significant demands on system capacity which must be met with high-cost funds in order to ensure high-quality service and the corresponding ability to retain customers.

Further, the potential for abuse is minimal because carrier line counts are publicly available and USAC is authorized to audit carrier submissions. Since carriers are responsible for reporting, accountability is not left with individual subscribers. Perhaps most important, consumers have no incentive to provide an inaccurate address for purposes of determining high-cost support. Consumers are completely unaware of high-cost support mechanisms, and carriers generally have far too much at stake to risk expulsion from the program or license revocation.

XII. Calls to Support Only “Primary Lines” Must be Rejected.

Some have theorized that the universal service support mechanism should only support a primary line. Last year, NTCA proposed a blatantly anticompetitive scheme that would presume that the ILEC is the primary carrier and only provide support to a CETC if a customer “cut the cord” completely from an ILEC.

Any proposal which would require a customer to choose its primary line for purposes of high-cost support is completely unworkable. Consumers generally have no idea as to what the high-cost system is all about, much less why they should select a “primary” carrier for support they do not receive. Carriers would be placed in the position of fighting over the customer

designation and would undoubtedly begin a new round of “slamming”, a consumer abuse that must be avoided.²⁷

RCA-ARC believes all lines must be supported in order to ensure that sufficient support is available to consumers. A new requirement to only support one primary line would have to take into account all network costs incurred by a carrier – which presumably would increase the per-line support amounts and not have the intended effect of lowering overall support levels. Similarly, in the wireless world, if five separate consumers at a residence have a wireless phone, they each consume and thus require network facilities that provide appropriate call completion levels and quality service. Thus, the costs generated by each line are appropriately supported. Fully portable support is likely to be a key to managing growth in the high-cost fund, because if a carrier does not lose any support when customers leave, it has no incentive to become more efficient and competitive.

XIII. Disaggregation Must Be Imposed When a CETC is Designated.

It has been RCA-ARC member experience that states are drowning in service area redefinition controversies, primarily because many ILECs have chosen Path 1 disaggregation. Appropriate disaggregation is a key to minimizing growth in the fund and ensuring that support is only paid in truly high-cost areas. If disaggregation is done properly, it should not matter where a competitor enters, because it will be unlikely that uneconomic support will be distributed. If a carrier only enters low-cost areas, it should receive little or no support. Likewise, if a carrier only enters a high-cost area, it should receive support in that area. Thus, the Joint Board should recommend that when a CETC is designated, affected ILECs must immediately disaggregate support to the wire center level by default, or be given an opportunity to file a plan

²⁷ RCA-ARC notes that on April 30 alone, the FCC released over 100 slamming orders.

of disaggregation under Path 2 or Path 3 under the current disaggregation rules. What should not be allowed is a continuation of the current state of affairs, in which ILECs are able to use a Path 1 disaggregation filing to forestall competition.

XIV. Service Area Redefinition Should Be Clarified.

As multiple ETCs are designated, each should be required to serve the entirety of their ETC service area so as to avoid picking and choosing only desirable areas. If disaggregation is done appropriately, then there becomes no need to “match up” service area boundaries with ILECs, because competitors will naturally go to the low-cost areas (which presumably yield no support) and available high-cost support in high-cost areas will encourage competitors to build viable business plans that work with support.

Today, many state ETC designation proceedings are becoming unnecessarily fixated on the idea – encouraged by ILECs – that a CETC must serve an entire study area in order to avoid the possibility of receiving uneconomic support. Some ILECs go so far as to advocate a CETC serving an entire ILEC study area, no matter how broad or noncontiguous the area, a clear barrier to entry. Some claim that consumers in unserved areas of a wire center are denied the benefits of competition that others in the wire center enjoy. That argument presumes that consumers even understand which wire center they reside in. Moreover, if a consumer is outside the service area of a CETC, it cannot get service from that provider – but presumably can get service from other carriers. If the consumer lives in a high-cost area, then there should be incentive for other carriers to request ETC status there and provide the consumer with choice. If it is a low-cost area, then by definition the consumer should already have the benefit of choices, since low-cost areas attract multiple service providers.

The Joint Board can reduce litigation nationwide and clarify obligations for all carriers by dealing with this issue now.

XV. ILECs Cannot Credibly Fight ETC Petitions While Retaining the Rural Exemption.

If ILECs are to credibly argue that there will be duplicative network construction and potentially stranded investment, then their advocacy should include a commitment to forgo the rural exemption contained in Section 251(c) of the Act. Accessing rural consumers through ILEC networks without lifting the exemption is prohibitively expensive. In particular, rural ILEC tariffed rates for T-1 facilities and transport and termination of traffic are exorbitantly high²⁸ and many refuse to load numbers on their switches unless a competitive carrier agrees to such terms. Networks must be opened, one way or another. It is not acceptable for any carrier to completely insulate itself from marketplace reality by claiming that it is wholly dependent upon universal service support for its existence.

XVI. Conclusion.

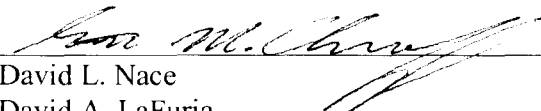
The Joint Board has been handed an enormous set of tasks. RCA-ARC is hopeful that these comments will provide useful information that enable productive deliberations to take place. RCA-ARC members look forward to participating in the process going forward.

²⁸ For example, one rural ILEC recently filed a tariff proposing a termination charge for CMRS-originated traffic of \$0.025 (2.5 cents) per minute, even when the CMRS carrier already pays a transiting carrier to terminate the traffic.

Respectfully submitted,

**RURAL CELLULAR ASSOCIATION
THE ASSOCIATION OF RURAL CMRS CARRIERS**

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May 5, 2003

CERTIFICATE OF SERVICE

I, Janelle Wood, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 5th day of May, 2003, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing *COMMENTS OF RURAL CELLULAR ASSOCIATION AND THE ALLIANCE OF RURAL CMRS CARRIERS* filed today to the following:

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A handwritten signature in black ink, reading "Janelle T. Wood". The signature is written in a cursive style with a large, looping initial "J".

Janelle T. Wood